IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 4680 of 2001

For Approval and Signature:

HONOURABLE MR.JUSTICE KS JHAVERI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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STATE OF GUJARAT - Petitioner(s)

Versus

FATABHAI SOMABHAI PAGI - Respondent(s)

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Appearance :

MR I.M. PANDYA, AGP, for Petitioner(s) : 1,

RULE SERVED for Respondent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE KS JHAVERI

Date : 10/01/2006

ORAL JUDGMENT

1. This petition is directed against the award dated 20.2.2000 passed by the Labour Court, Godhra in Reference (LCG) no.631/90, whereby the petitioner was directed to reinstate the respondent in service along with 20% back

wages.

2. The short facts of the case are that the respondent was working with the petitioner Department. According to the petitioner, he has voluntarily left the job and thereafter raised a dispute which was referred to the Labour Court, which passed the aforesaid award.

3. Learned counsel for the petitioner submitted that the Labour Court has committed an error in allowing the reference inasmuch as the respondent has not completed 240 days of service and he has voluntarily left the job. He submitted that the dispute was raised after three years and therefore the reference should not have been entertained. He, therefore, submitted that the petition requires to be allowed.

4. Though served none appears for the respondent.

5. As a result of hearing and perusal of the record, I am of the opinion that the Labour Court has clearly recorded a finding that provisions of section 25-F of the Act are applicable to the facts of the present case and further recorded that the termination was illegal. I am in complete agreement with the reasonings adopted and findings arrived at by the Labour Court in so far as reinstatement is concerned.

6. However, the Labour Court has not given cogent and convincing reason for grant of back wages. The law on the subject is well settled. In the case of Ram Ashrey Singh Vs. Ram Bux Singh, reported in (2003) II LLJ 176, it is held that the workman had no automatic entitlement to back wages since it is discretionary and has to be dealt with in accordance with facts and circumstances of each case. In the case of General Manager, Haryana Roadways Vs. Rudhan Singh, reported in JT 2005(6) SC 137 (=2005 (5) SCC 591), after referring to various decisions on the said subject, the Apex Court held that order for payment of back wages should not be passed in mechanical manner, but a host of factors are to be taken into consideration before passing any such order.

7. In the premises aforesaid, the petition is partly allowed. The impugned award qua back wages is quashed and set aside. The rest of the award is confirmed. The award of the Labour Court is modified to the aforesaid extent. Rule is made absolute accordingly with no order as to costs.

[K.S. JHAVERI, J.]

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